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11
12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15
16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Applicant,

19 v.

20 ELON MUSK,

21 Respondent.

Case No. 3:23-mc-80253-LB

**ATTORNEY DECLARATION OF ALEX
SPIRO IN SUPPORT OF ELON MUSK'S
OPPOSITION TO THE SECURITIES
AND EXCHANGE COMMISSION'S
NOTICE AND APPLICATION FOR AN
ORDER COMPELLING COMPLIANCE
WITH AN ADMINISTRATIVE
SUBPOENA**

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28 Case No. 3:23-mc-80253-LB

ATTORNEY DECLARATION OF ALEX SPIRO ISO ELON MUSK'S OPPOSITION TO THE SECURITIES AND
EXCHANGE COMMISSION'S NOTICE AND APPLICATION FOR AN ORDER COMPELLING COMPLIANCE
WITH AN ADMINISTRATIVE SUBPOENA

DECLARATION OF ALEX SPIRO

I, Alex Spiro, pursuant to 28 U.S.C. § 1746 and upon penalty of perjury, declare as follows:

1. I am a partner with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, and counsel for Elon Musk. I am a member in good standing of the Bar of the State of New York. I make this declaration based on personal knowledge and, if called as a witness, I could and would testify competently to the matters set forth herein. I make this declaration in support of Elon Musk's Opposition to Securities and Exchange Commission's Notice and Application for an Order Compelling Compliance with an Administrative Subpoena.

2. ***Attachments:*** Attached as Exhibit 1 is a true and correct copy of Mr. Musk's Schedule 13G dated April 4, 2022.

3. Attached as Exhibit 2 is a true and correct copy of Mr. Musk's Schedule 13D dated April 5, 2022.

4. Attached as Exhibit 3 is a true and correct copy of the Order Directing Private Investigation and Designating Officers to Take Testimony (the "Formal Order") dated April 17, 2022, filed under seal.

5. Attached as Exhibit 4 is a true and correct copy of counsel's letter to the Securities and Exchange Commission ("SEC" or "Commission") dated July 13, 2022.

6. Attached as Exhibit 5 is a true and correct copy of the Corrected Order Directing Private Investigation and Designating Officers to Take Testimony (the "Corrected Formal Order") dated July 15, 2022, filed under seal.

7. Attached as Exhibit 6 is a true and correct copy of the SEC subpoena to Mr. Musk dated April 18, 2022.

8. Attached as Exhibit 7 is a true and correct copy of the SEC subpoena to Mr. Musk dated August 8, 2022.

9. Attached as Exhibit 8 is a true and correct copy of the SEC subpoena to Mr. Musk dated September 27, 2022.

10. Attached as Exhibit 9 is a true and correct copy of the SEC subpoena to Mr. Musk dated September 29, 2022.

1 11. ***Facts:*** Since 2018, the SEC has issued dozens upon dozens of subpoenas on Mr.
2 Musk and related entities, imposing burdensome compliance costs without ever charging him with
3 violating the law.

4 12. On November 18, 2019, the same day that the Commission closed the investigation
5 into Mr. Musk's 2018 tweet, it opened a new investigation into SpaceX.

6 13. In 2022, when Mr. Musk sought relief in the Southern District of New York, at least
7 one member of the SEC staff responded by leaking to the press certain information regarding its
8 investigation. The SEC has never denied it was responsible for the leak.

9 14. On April 4, 2022, the same day as Mr. Musk's Schedule 13G filing, the SEC's
10 Division of Corporation Finance sent Mr. Musk an inquiry about the filing. Shortly thereafter, the
11 Enforcement Division intervened so that the same individuals investigating Mr. Musk's compliance
12 with the consent decree could also manage the present investigation.

13 15. To date, the SEC has issued 32 administrative subpoenas in this investigation. Mr.
14 Musk has received five document subpoenas and three testimony subpoenas. The Commission's
15 discovery demands have sought, *inter alia*, all of Mr. Musk's emails relating to the Twitter merger
16 through August 2022 and the testimony of multiple individuals who had no role in the Schedule 13
17 filings at issue. The SEC has sent many document requests to two, three, four, or more individuals
18 and entities. As part of its investigation, the Commission has taken testimony from Mr. Musk and
19 at least three other individuals a combined seven times. During at least one testimony, the SEC
20 inquired into Mr. Musk's passion for the First Amendment.

21 16. On June 1, 2022, the SEC took the testimony of Mr. Musk's wealth manager via
22 WebEx for approximately four hours regarding SEC filing requirements in connection with the
23 purchase of Twitter shares, his role in preparing the Schedules 13G and 13D, and his reliance on
24 advice from counsel.

25 17. On July 12, 2022, the Commission took Mr. Musk's testimony via WebEx for
26 approximately four hours regarding, *inter alia*, Mr. Musk's purchases of Twitter stock in 2022,
27 discussions with Mr. Musk's wealth manager regarding SEC filing requirements, Mr. Musk's
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Schedule 13G filing and subsequent Schedule 13D amendment, and discussions about joining Twitter's board.

18. On July 27, 2022, the Commission took Mr. Musk's testimony for a second remote, approximately four-hour session regarding, *inter alia*, another Schedule 13D Amendment and his acquisition of Twitter.

19. On September 15, 2022, the SEC took the testimony of Mr. Musk's wealth manager a second time for approximately four hours via WebEx regarding, *inter alia*, the Schedule 13 filings and Mr. Musk's acquisition of Twitter.

20. On or around May 23, 2023, I agreed to accept service of the Commission's May 23, 2023 subpoena via email, but did not consent or concede that the Commission had the authority to compel Mr. Musk's attendance.

21. On October 30, 2023, the Commission took the testimony of Mr. Musk's wealth manager a third time via WebEx for approximately four hours. In the SEC's October 30, 2023 interview with this individual the Commission questioned him about an excerpt from Mr. Musk's biography, which he testified he had not read in its entirety.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: November 2, 2023

/s/ Alex Spiro
Alex Spiro

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